

CONSERVATION SERVICE REFORM ACT OF 1985

JUNE 27 (legislative day, JUNE 26), 1985.—Ordered to be printed

Mr. McCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 410]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 410) to repeal the Commercial and Apartment Conservation Service, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill as amended do pass.

The amendment is as follows:

On page 2, after line 3, insert the following new sections:

“SEC. 3. (a) INFORMATION REQUIREMENTS.—Sections 215(a), 215(d) and 217(a)(1) of the National Energy Conservation Policy Act (relating to utility programs and home heating supplier programs) are amended by striking out ‘January 1, 1985’ each place it appears and inserting in lieu thereof ‘January 1, 1988’.

“(b) REPORT.—The Comptroller General shall prepare and transmit to Congress before June 30, 1986 a report evaluating the utility and home heating supplier programs of the Residential Conservation Service implemented under part 1 of title II of the National Energy Conservation Policy Act. The report shall be based on survey information gathered by the Secretary of Energy in consultation with the Comptroller General and on other information in possession of the Secretary of Energy. The report shall examine and assess, for the programs under this part—

“(1) the potential for achievable energy savings through implementation of residential energy conservation measures in residential dwellings in the United

States and the importance of the Residential Conservation Service in achieving these savings;

"(2) Residential Conservation Service program costs on a State-by-State and a national basis, taking into account costs to the taxpayer and to ratepayers of affected utilities;

"(3) Residential Conservation Service program benefits on State-by-State and a national basis, taking into account the value of energy conserved and the value of deferral of investment in new capacity to provide energy;

"(4) efforts of utilities to encourage the implementation of residential energy efficiency measures by their customers and the relationship between these efforts and the observed response rate under Residential Conservation Service programs;

"(5) measured energy savings achieved in residential dwellings in which measures are installed under such programs;

"(6) the extent to which utilities have adopted programs voluntarily or under State law that offer more promise in encouraging energy efficiency that has been the case under the Residential Conservation Service;

"(7) the extent to which modifications in the regulations implementing the Residential Conservation Service could improve the cost effectiveness of the program;

"(8) legislative changes that are necessary to improve the cost effectiveness of the program; and

"(9) such other matters as seem appropriate in order to assist Congress in deciding the future of the Residential Conservation Service.

"(c) EXPIRATION.—The provisions of part 1 of title II of the National Energy Conservation Policy Act shall expire on January 1, 1988, but such expiration shall not affect any action or pending proceeding not finally determined on such date of expiration nor any action or proceeding based upon any act committed prior to such date of expiration.

"SEC. 4. Section 218(a) of the National Energy Conservation Policy Act is amended by striking the last sentence thereof and inserting 'Such temporary exemption may be granted or renewed until such date as determined by the Secretary.'".

PURPOSE

As ordered reported, S. 410 would repeal the Commercial and Apartment Conservation Service (CACS) as authorized under title VII of the National Energy Conservation Policy Act (NECPA) (94 Stat. 752). It would extend the notification requirement of the Residential Conservation Service (RCS) under title II of NECPA (92 Stat. 3209) until January 1, 1988, at which time the program would

be terminated. Finally, S. 410 would require the Comptroller General to prepare and transmit to Congress before June 30, 1986, a report evaluating the RCS program.

BACKGROUND AND NEED

The Federal Residential Conservation Service (RCS) was mandated by the 1978 National Energy Conservation Policy Act (NECPA) (Public Law 95-619) and amended by the 1980 Energy Security Act (Public Law 96-294). The program is intended to promote the conservation of energy in residential households by providing information and assistance. Because of their expertise in energy issues and because of their frequent contact with residential customers, utilities were selected as the institutions to provide the required information and assistance. In practice, the utilities are to gather and provide information through a residential inspection, known as an "energy audit." Under the law, as amended, utilities must offer to:

- Provide information to each customer on the potential energy savings and estimated costs of individual conservation and renewable resource investments;

- Provide information to customers on energy-saving practices;

- Provide lists of contractors and lenders and help in arranging for contractors and financing;

- Inspect completed conservation measures in certain instances; and

- Provide conciliation services for customer complaints.

The statute directs the Department of Energy to promulgate regulations for the implementation of the RCS program. Each State is directed to prepare, in cooperation with its utilities, a State plan for submission to the Department of Energy. If a State does not submit a plan or does not receive approval of its submitted plan, then the Department of Energy is required to implement a Federal standby plan.

The Energy Security Act, passed by Congress in 1980, made the following changes in the RCS program:

- Removed the prohibition on direct utility financing and allowed utilities to subcontract for installation of conservation measures;

- Placed a \$15 per audit ceiling on charges to residential customers;

- Reduced the minimum warranty requirements from 3 years to 1 year; and

- Provided that after State plan approval, affected utilities must send program announcements to their customers informing them of the RCS program every 2 years until January 1, 1985.

There is no termination date for the program itself, however.

The 1980 statute also initiated the development of the Commercial and Apartment Conservation Service (CACS) by adding title VII to NECPA. The design of this program is similar to that of the RCS program, except that the CACS program is targeted to save energy in commercial and apartment buildings instead of residential buildings, as in the RCS program. The CACS is in the early stages of implementation. The deadline for submitting plans to the

Department of Energy for approval was June 4, 1984. At this time, 17 States and Puerto Rico have had their CACS plans approved. However, States and utilities are not required to begin offering services until 1 years after their plans have been approved. One of the 17 States with approved plans, Michigan, has begun offering services.

A number of concerns have been expressed about the cost-effectiveness of the programs. For example, in a January 19, 1984, evaluation report of the RCS program, the Department of Energy identified some of the major strengths and weaknesses of the programs. Among the report's conclusions on the program's shortcomings was the statement:

It is now believed that the present on-site audits may not be an effective mechanism for reaching less wealthy and/or rental households. Other techniques, including working through community groups, greater focus on quick payback items or shared savings programs, may be more effective in various settings.

In the overall conclusions, the DOE report adds:

. . . participation to date had been less extensive or demographically broad than desired, and audit costs, now averaging \$120, include certain elements that are recognized as neither necessary nor cost-effective.

As a result of this evaluation, DOE has taken the position that the RCS program be discontinued.

Because of the similarities between the RCS and CACS programs, many of the basic problems identified in the January 1984 analysis of the RCS program are expected to occur in the CACS program. Further, the potential energy savings for the CACS program is far smaller than that of the RCS program because the total amount of energy used by eligible customers is less, 1.0 quad and 7.7 quads, respectively. During the May 6, 1980 hearing on S. 410, DOE testified that considering its position that the RCS program be discontinued, the CACS program should not be maintained.

A further concern regarding the RCS program is that its legal authority is being questioned. On January 1, 1985, the notification requirement of the program expired. DOE has argued that, in their view, the RCS statute contemplates an orderly winding down of all program services after issuance of the final notice. This view has been disputed by both the Congressional Research Service and the Comptroller General of the United States.

LEGISLATIVE HISTORY

On February 6, 1985, Senator Johnston, with Senators McClure, Murkowski and Warner as cosponsors, introduced S. 410. Senators Tribble and Nickles were added as cosponsors on March 20 and May 14 respectively. The Subcommittee on Energy Conservation and Regulation held a hearing on the bill on May 6, 1985.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee, in an open business session on June 19, 1985, by a unanimous vote of a quorum present, recommended that the Senate pass S. 410 if amended as described herein.

The rollcall vote on reporting to measure was 17 yeas and 0 nays, as follows:

YEAS

Mr. McClure
Mr. Hatfield*
Mr. Weicker*
Mr. Domenici*
Mr. Wallop
Mr. Warner
Mr. Murkowski
Mr. Nickles
Mr. Hecht
Mr. Evans
Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum
Mr. Bradley
Mr. Bingaman
Mr. Rockefeller

NAYS

* Indicates voted by proxy.

COMMITTEE AMENDMENT

The Committee adopted an amendment which adds four provisions to the original provision of S. 410 repealing the CACS program. These additions would:

- 1, amend sections 215(a), 215(d) and 217(a)(1) NEPCA to extend the notification requirement of the RCS program from January 1, 1985 to January 1, 1988;
- 2, require the Comptroller General to prepare and transmit to Congress before June 30, 1986, a report evaluating the RCS program;
- 3, provide that title II of NEPCA, which authorizes the RCS program shall expire on January 1, 1988, and
- 4, amend section 218(a) of NEPCA to allow the Secretary of Energy to renew existing temporary exemptions from RCS requirements.

The Committee amendment extends the notification requirement for the RCS program and adds an explicit termination provision in order to resolve the uncertainty which currently exists over the program's legal status. With extension of the notification requirement the Committee intends that DOE activities under the program return to the status prior to termination of the notification requirement on January 1, 1985. Further, in order to avoid such uncertainty again when the new notification termination date is reached on January 1, 1988, the Committee provided for the expiration of the entire RCS authorizing legislation at that time.

The Committee amendment would require the Comptroller General to report to Congress on the RCS program in order to provide Congress with the information necessary to determine whether further legislation should be enacted regarding the program. The Committee expects that the report will be submitted to Congress before June 30, 1986. It is the intention of the Committee that there be sufficient time between receipt of the report and the RCS termination date to allow for review of the report and enactment of legislation affecting the RCS program, if any is needed, before the program terminates.

Finally, in order to extend the current status of those RCS utility and State programs which currently have temporary exemptions, the Committee amended section 218(a) of NECPA to authorize the Secretary of Energy to renew such temporary exemptions. New temporary programs cannot be granted under section 218 because the deadline for application for such programs has passed.

COST AND BUDGETARY CONSIDERATIONS

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 20, 1985.

HON. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 410, the Conservation Service Reform Act of 1985, as ordered by the Senate Committee on Energy and Natural Resources, June 19, 1985. We estimate that enactment of this bill would result in additional outlays of \$100,000 to \$350,000 in fiscal year 1986, and in outlays savings of \$400,000 to \$500,000 per year in fiscal years 1987 through 1990. Enactment of S. 410 would not result in any additional costs to state and local governments.

S. 410 has three major provisions: (1) repeal of Title VII of the National Energy Conservation Policy Act (NECPA), which relates to the Commercial Apartment Conservation Service (CACS); (2) extension of NECPA information requirements relating to utility and home heating supplier programs; and (3) extension of Department of Energy (DOE) authority for continuing exemptions for utility programs that have already received "temporary program" approval of DOE. The first of these three provisions results on a reduction of DOE costs by removing the need for reviewing state CACS plans, for implementing a federal standby plan, and for monitoring and administering the CACS program. Under current law, the cost for these CACS functions is estimated to be \$400,000 in fiscal year 1986, rising to appropriately \$500,000 by fiscal year 1990. Some small savings to states would result from eliminating the need for state plans required under Title VII.

The extension of NECPA information requirements relating to utility and home heating supplier programs includes an extension

of utility reporting requirements from January 1, 1985, to January 1, 1988. These utility programs do not affect federal, state or local government expenditures. However, the home heating supplier program extension contained in S. 410 also includes a requirement for a report by the U.S. Comptroller General in consultation with the Department of Energy. This report must be transmitted to the Congress by June 30, 1986, and must examine and assess energy savings relating to Residential Conservation Service programs on both a State-by-State and a national bases. Based on information from DOE, data collection and preparation of this report are estimate to cost \$500,000 to \$750,000 in fiscal year 1986.

The third provision of S. 410 extends DOE authority for approval of existing "temporary" conservation programs. Utilities that have received temporary program approval are exempt from sections 216 and 217 of NECPA; these sections contain specific requirements for utility programs relating to residential conservation. The extensions of the temporary program authority provided by S. 410 will not affect federal outlays.

If you would like further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT EVALUATION

The bill would not impose any additional Government-established standards or significant economic responsibilities on private individuals or businesses. It would continue those Government-established standards or economic responsibilities imposed by title II of NECPA. It would avoid application of those associated with the implementation of title VII of NECPA.

No personal information would be collected in administering this program. Therefore there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 410, even though it does require that a report be made to Congress.

EXECUTIVE COMMUNICATIONS

There were no legislative reports or communications received by the Committee from the Administration relating to S. 410.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 410, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

NATIONAL ENERGY CONSERVATION POLICY ACT

(92 Stat. 3206)

.

TITLE II—RESIDENTIAL ENERGY CONSERVATION

PART 1—UTILITY PROGRAM

.

SEC. 215. UTILITY PROGRAMS.

(a) **INFORMATION REQUIREMENTS.**—Each utility program shall include procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, and each two years thereafter before [January 1, 1985,] *January 1, 1988*, each of its residential customers who owns or occupies a residential building, or—

(1) the suggested measures for the category of buildings which includes such residential building;

(2) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category;

(3) the availability of the arrangements described in subsection (b) and the lists referred to in section 213(a) (2) and (3); and

(4) suggestions of energy conservation techniques, including suggestions of energy conservation techniques, including suggestions developed by the Secretary, such as adjustments in energy use patterns and modifications of household activities which can be employed by the residential customers to save energy and which do not require the installation of energy conservation measures (including the savings in energy conservation measures (including the savings in energy costs that are likely to result from the adoption of such suggestions).

.

(d) **REQUIREMENTS RESPECTING NEW CUSTOMERS.**—In the case of any person who becomes a residential customer of a utility carrying out a utility program under this section after January 1, 1980 (or the date six months after approval of the applicable plan, if later), and before [January 1, 1985,] *January 1, 1988*, not later than 60 days after such person becomes a residential customer of such utility, such utility shall inform such person of the items listed in subsection (a), the offer required under subsection (b)(1)(A), and shall offer such person the opportunity to enter into arrangements referred to in subparagraphs (B) and (C) of subsection (b)(1).

.

SEC. 217. HOME HEATING SUPPLIER PROGRAMS.

(a) **REQUIREMENTS.**—Each home heating supplier program shall include—

(1) procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, and each two years thereafter before [January 1, 1985,] *January 1, 1988*, each residential customer of each participating home heating supplier who owns or occupies a residential building of—

(A) the suggested measures for the category of buildings which includes such residential building;

(B) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category; and

(C) the availability of the arrangements described in paragraph (2) of this subsection; and

(2) procedures whereby a participating home heating supplier, no later than January 1, 1980 (or the later date referred to in paragraph (1)) will offer each such residential customer the opportunity to enter into arrangements with the home heating supplier under which such supplier, directly or through one or more inspectors under contract, will—

(A) inspect the residential building to determine and inform the residential customer of the estimated cost of purchasing and installing, and the savings in energy costs that are likely to result from installing, suggested measures;

(B) inform each interested customer of the lists referred to in section 213(a) (2) and (3);

(C) install or have suggested measures installed;

(D) make, or arrange for another lender to make a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

(E) permit the residential customer to repay the principal of and interest on any loan made pursuant to subparagraph (d) (over a period of not less than three years unless the customer elects a shorter payment period) as a part of his periodic bill except:

(i) failure to make any payment of such principal or interest shall not be grounds for the terminations of fuel deliveries to the residential customer: and

(ii) a lump-sum payment of outstanding principal and interest may be required upon default (as determined under otherwise applicable law) in payment by the residential customer.

No penalty shall be imposed by the lender, under procedures described in paragraph (2), for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(b) NOTICE; WAIVER.—A home heating supplier who wishes to participate in the program established pursuant to this section may so notify the Governor. The Governor may waive, for any home heating supplier, any requirement of this section, upon demonstration to his satisfaction that the resources of such supplier do not enable him to comply with such requirement.

SEC. 218. TEMPORARY PROGRAMS.

(a) **EXEMPTION FROM CERTAIN REQUIREMENTS.**—A Governor of any State, on behalf of one or more utilities, or any public utility (supported by the Governor in the case of a regulated utility) may, no later than 180 days after the promulgation of rules pursuant to section 212, apply for a temporary exemption for one or more utilities from one or more of the requirements of section 215 and the prohibitions contained in section 216(a). [Such temporary exemption may be granted, as determined by the Secretary, for a period not to exceed 3 years after the date of approval of such exemption.] *Such temporary exemption may be granted or renewed until such date as determined by the Secretary.*

* * * * *

[TITLE VII—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

[PART 1—GENERAL PROVISIONS

[SEC. 710. DEFINITIONS.

[(a) APPLICABILITY OF TITLE II DEFINITIONS.—The definitions in section 210 are applicable to this title, except as otherwise provided in this section.

[(b) ADDITIONAL DEFINITIONS.—As used in this title—

[(1) The term “building heating supplier” means any person engaged in the business of selling No. 2, No. 4, or No. 6 heating oil, kerosene, or propane to eligible customers.

[(2) The term “commercial building” means a building—

[(A) which was completed on or before the date of enactment of this title,

[(B) which is used primarily for carrying out a business (including a nonprofit business) or for carrying out the activities or administration of a State or local government,

[(C) which is not used primarily for the manufacture or production of products, raw materials, or agricultural commodities, and

[(D) for which the average monthly use of energy for the calendar year 1980 is less than 4,000 kilowatt hours of electricity or 1,000 therms of natural gas or the Btu equivalent thereof of any other fuel;

except that such term does not include a Federal building as defined in section 521(2).

[(3) The term “multifamily dwelling” means a building which is used for residential occupancy, was completed on or before the date of enactment of this title, and contains five or more dwelling units and a central heating or central cooking system.

[(4) The term “energy efficient improvements” means any change in the operation or maintenance of a commercial building or multifamily dwelling, which change is designed primarily to reduce energy consumption in such building or dwelling

and which has been identified by the Secretary in the rules promulgated under section 712(a) or approved by the Secretary for consideration in the energy audits offered to eligible customers under section 731, 732, or 741.

[(5) The term "commercial energy conservation measure" means any installation or modification of an installation which is primarily designed to reduce the consumption of petroleum, natural gas, or electrical power in a multifamily dwelling or commercial building, including—

[(A) caulking and weatherstripping;

[(B) the insulation of the building or dwelling structure and systems within the building or dwelling;

[(C) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflecting window and door systems, glazing, reductions in glass area, and other window and door system modifications;

[(D) automatic energy control systems;

[(E) equipment, associated with automatic energy control systems, which is required to operate variable steam, hydraulic, or ventilating systems;

[(F) furnace, or utility plant and distribution system, modifications, including—

[(i) replacement burners, furnaces, boilers, or any combination thereof, which (as determined by the Secretary) substantially increases the energy efficiency of the heating system,

[(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system, and

[(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

[(G) replacement or modification of a lighting system which increases the energy efficiency of the lighting system without increasing the overall illumination of the building or dwelling (unless such increase in illumination is necessary to conform to any applicable State or local building code or the increase is considered appropriate by the Secretary);

[(H) energy recovery systems;

[(I) cogeneration systems which produce electricity, as well as steam or other forms of thermal or mechanical energy, and which meet such fuel efficiency requirements as the Secretary may, by rule, prescribe;

[(J) a solar energy system, as defined in section 504(8) of the Solar Energy and Energy Conservation Bank Act; and

[(K) such other measures as the Secretary identifies, by rule, for purposes of this title.

[(6) The term "eligible customer" means—

[(A) with respect to a public utility, the owner or tenant of a commercial building or the owner of a multifamily dwelling to whom that public utility sells natural gas or electricity for use in such building or dwelling, or

[(B) with respect to a building heating supplier, the owner or tenant of a commercial building or the owner of

a multifamily dwelling to whom that building heating supplier sells No. 2, No. 4, or No. 6 heating oil, kerosene, or propane for use in such building or dwelling.

[(7) The term "energy audit" means an onsite inspection of a commercial building or a multifamily dwelling which determines and informs the eligible customer of at least—

[(A) the type, quantity, and rate of energy consumption of such building or dwelling;

[(B) energy efficient improvements appropriate to such building or dwelling; and

[(C) the need, if any, for the purchase and installation of commercial energy conservation measures in such building or dwelling.

The Secretary, after consulting with appropriate State officials, may establish criteria for such audits on a regional basis to account for regional variations in energy use.

[(8) The term "utility program" means a program meeting the requirements of section 731.

[(9) The term "building heating supplier program" means a program meeting the requirements of section 732.

[SEC. 711. COVERAGE.

[(This title shall apply to any public utility for which coverage is provided under section 211.

[SEC. 712. RULES OF SECRETARY FOR SUBMISSION AND APPROVAL OF PLANS.

[(a) **PROMULGATION OF RULES BY THE SECRETARY.**—The Secretary shall, not later than 120 days after enactment of this title and after consultation with the Secretary of Housing and Urban Development and the heads of such other agencies as the Secretary deems appropriate, publish proposed rules on the content and implementation of State energy conservation plans for commercial buildings and multifamily dwellings which meet the requirements of this title. After publication of such proposed rules, the Secretary shall afford interested persons (including Federal and State agencies) an opportunity to present oral and written comments on such proposed rules. Rules prescribing the content and implementation of State energy conservation plans for commercial buildings and multifamily dwellings shall be published not earlier than forty-five days after publication of the proposed rules.

[(b) **ENERGY EFFICIENT IMPROVEMENTS OF DIFFERENT TYPES AND CATEGORIES.**—The rules promulgated under subsection (a) may identify energy efficient improvements in different types of commercial buildings and multifamily dwellings by climatic region and by categories determined by the Secretary on the basis of type of construction and any other factors which the Secretary deems appropriate. Such improvements shall be considered in the energy audits offered to eligible customers under sections 731, 732, and 741.

[(c) **COORDINATION.**—The rules promulgated under subsection (a) shall, to the extent practicable, coordinate the requirements of this title with the provisions of section 367(b)(1) of the Energy Policy and Conservation Act and with the utility program established under title II, part 1 of this Act. Such rules shall not have the

effect of delaying the submission, approval, or implementation of residential energy conservation plans under title II, part 1 of this Act.

[(d) OTHER RULES.—The Secretary may prescribe any other rules necessary to carry out the provisions of this title.

[PART 2—ENERGY CONSERVATION PLANS]

[SEC. 721. PROCEDURES FOR SUBMISSION AND APPROVAL OF STATE ENERGY CONSERVATION PLANS FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS.]

[(a) SUBMISSION AND APPROVAL OF STATE PLANS.—Not later than 180 days after the promulgation of rules under section 712(a), the Governor of each State (or any State agency specifically authorized to do so under State law) may submit to the Secretary a proposed energy conservation plan for commercial buildings and multifamily dwellings which meets the requirements of the rules promulgated under section 712. Within such 180-day period, each nonregulated utility shall submit a proposed plan, which meets the requirements of the rules promulgated under section 712, to the Secretary unless a plan submitted under the preceding sentence for the State in which the nonregulated utility provides utility service applies to nonregulated utilities as provided in subsection (b). The Secretary may, upon request of the Governor or State agency or nonregulated utility, extend for good cause shown, the time period for submission of a plan. Each plan submitted in accordance with this subsection shall be reviewed and approved or disapproved in accordance with the procedures of subparagraphs (B) and (C) of section 212(c)(1).

[(b) NONREGULATED UTILITIES.—Any plan submitted by a Governor or State agency under subsection (a) may, in the discretion of the Governor if he notifies the Secretary within 30 days after promulgation of rules under section 712(a), apply to nonregulated utilities providing utility service in the State in the same manner as to regulated utilities. In any such case, reference elsewhere in this title to regulated utilities (including references to utilities with respect to which a State regulatory authority exercises ratemaking authority) shall, with respect to such State, be treated as references also to nonregulated utilities and references elsewhere in this title to non-regulated utilities shall not apply. For purposes of this subsection, the term 'nonregulated utility' shall not include any public utility which is a Federal agency.

[(c) PLAN FOR BUILDING HEATING SUPPLIERS.—A plan applicable to building heating suppliers may be submitted by the Governor in his discretion.

[(d) TENNESSEE VALLEY AUTHORITY.—In the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority, the authority otherwise vested in the Governor or State agency under this section shall be vested in the Tennessee Valley Authority.

[SEC. 722. REQUIREMENTS FOR STATE PLANS FOR REGULATED UTILITIES.]

[No proposed energy conservation plan for commercial buildings and multifamily dwellings submitted for regulated utilities shall be approved by the Secretary unless such plan—

[(1) requires each regulated utility to implement a program which meets the requirements of section 731 and such other requirements as may be contained in the rules promulgated by the Secretary under section 712, except that no such program may be required to apply to all of the multifamily dwellings and commercial buildings located within such utility's service areas if, within 6 months from the date on which the Secretary's rules are promulgated with respect to such program, the State regulatory authority which exercises ratemaking authority over such utility determines that the inclusion of such additional buildings or dwellings would significantly impair such utility's ability—

[(A) to fulfill the requirements of section 215, or

[(B) to provide utility service to its customers.

[(2) provides adequate State procedures for implementing the enforcement of the plan;

[(3) provides procedures for insuring that effective coordination exists among various local, State, and Federal energy conserving programs within and affecting such State; and

[(4) is adopted after notice and public hearing.

[SEC. 723. PLAN REQUIREMENTS FOR NONREGULATED UTILITIES AND BUILDING HEATING SUPPLIERS.]

[(a) REQUIREMENTS FOR PLANS FOR NONREGULATED UTILITIES.—No plan proposed by a nonregulated utility shall be approved by the Secretary unless such plan meets the same requirements as provided under section 722 for regulated utilities. In applying the requirements of section 722 in the case of a plan for a nonregulated utility under this section, any reference to a regulated utility shall be treated as a reference to a nonregulated utility and the reference to the State regulatory authority shall be treated as a reference to the Governor.

[(b) REQUIREMENTS FOR PLANS FOR BUILDING HEATING SUPPLIERS.—No plan proposed for building heating suppliers shall be approved by the Secretary unless such plan meets the same requirements as provided under paragraphs (3) and (4) of section 722 and—

[(1) meets the requirements of section 732 and contains adequate enforcement procedures with respect to such requirements;

[(2) meets such requirements applicable to building heating suppliers as may be contained in the rules promulgated under section 721; and

[(3) takes into account the resources of small building heating suppliers.

[PART 3—UTILITY PROGRAMS]

[SEC. 731. UTILITY PROGRAMS.]

[(a) GENERAL REQUIREMENTS.—Each utility program shall include procedures designed to provide that each public utility—

[(1) offers to each eligible customer, no later than 12 months after the approval of the applicable plan and every 24 months thereafter until 1990, an energy audit of the eligible customer's commercial building or multifamily dwelling;

[(2) conditions the availability of an energy audit in the case of a multifamily dwelling upon the agreement by the eligible customer to provide to the tenants of the customer's multifamily dwelling the information developed by such audit concerning energy efficient improvements and commercial energy conservation measures applicable to the individual dwelling units in such dwelling;

[(3) maintains a report of each audit performed pursuant to this subsection with respect to a commercial building or multifamily dwelling for not less than 10 years, which report shall be available to any subsequent eligible customer of such commercial building or multifamily dwelling; and

[(4) shall not be required to conduct an energy audit of a commercial building or multifamily dwelling which has been audited previously pursuant to this title or title III;

except that any public utility may contract with one or more persons, including another utility, to carry out directly some or all of the responsibilities required by this subsection.

[(b) REQUIREMENTS CONCERNING ACCOUNTING AND PAYMENT OF COSTS.—Each State regulatory authority or nonregulated utility shall, within 180 days after promulgation of rules under section 712(a), or such longer period as the Secretary for good cause may allow, provide—

[(1) that all amounts expended or received by the utility which are attributable to the utility program (including any penalties paid by such utility under section 741) are accounted for on the books and records of the public utility separately from amounts attributable to all other activities of such utility;

[(2) that all amounts expended by a utility for providing information concerning the availability of the energy audit offered pursuant to subsection (a)(1) are to be treated for such purposes as a current expense of providing utility service and charged to all ratepayers of such utility in the same manner as current operating expenses of providing such utility service; and

[(3) that all other amounts expended by a public utility to carry out the provisions of this title, are recovered in the manner specified by the State regulatory authority which has rate-making authority over such utility (or in the case of a nonregulated utility in the manner specified by such nonregulated utility); except that, in the case of a multifamily dwelling, the amount which may be recovered directly from an eligible customer for whom the activities described in subsection (a) are performed shall not exceed a total of \$15 per dwelling unit or the actual cost of such activities, whichever is less; in determining the amount to be recovered directly from customers as provided under this paragraph, the State regulatory authority (in the case of a regulated utility) or the utility (in the case of a nonregulated utility) shall take into consideration, to the extent practicable, the customer's ability to pay and the likely levels of participation in the utility program which will result from such recovery.

[(c) RATEPAYER.—For purposes of subsection (b), the term "ratepayer" means any person, State agency, or Federal agency who

purchases electric energy or natural gas from a utility for purposes other than for resale.

[SEC. 732. BUILDING HEATING SUPPLIER PROGRAM.]

[(a) REQUIREMENTS.]—Except as may be provided by the Secretary, the procedures for each building heating supplier program shall be identical to the procedures required for utilities in section 731(a).

[(b) WAIVER.]—The Governor may waive, for any building heating supplier, any requirement established pursuant to this section, upon demonstration to the Governor's satisfaction that the resources of such supplier do not enable the supplier to comply with such requirement.

[PART 4—FEDERAL IMPLEMENTATION]

[SEC. 741. FEDERAL STANDBY AUTHORITY.]

[(a) PROMULGATION OF PLAN BY THE SECRETARY.]—If a State does not have a plan approved under section 721 within 270 days after promulgation of rules under section 712(a), or within such additional period as the Secretary may allow pursuant to section 721(a), or if the Secretary determines after notice and opportunity for a public hearing that an approved plan is not being adequately implemented in such State, the Secretary shall—

[(1)] promulgate a plan which meets the requirements of section 722; and

[(2)] under such plan, by order, require each regulated utility in the State to offer, no later than 90 days following the date of issuance of such order, to its eligible customers a utility program prescribed in such order which meets the requirements specified in section 731.

[(b) NONREGULATED UTILITIES.]—If a nonregulated utility which is not covered by an approved State plan under section 721 does not have a plan approved under such section within 270 days after promulgation or rules under section 712(a) or within such additional period as the Secretary may allow pursuant to section 721(a), or if the Secretary determines that such nonregulated utility has not adequately implemented an approved plan, the Secretary shall, by order, require such nonregulated utility—

[(1)] to promulgate a plan which meets the requirements of section 732 and which applies to the commercial buildings and multifamily dwellings which would have been covered had such a plan been so approved or implemented; and

[(2)] no later than 90 days following the date of issuance of such order, to offer to its customers a utility program prescribed in such plan which meets the requirements specified in section 731.

[(c) ENFORCEMENT.]—If the Secretary determines that any person has violated any provision of this title, any plan approved or promulgated under this title, or any order issued pursuant thereto, the Secretary may file a petition in the appropriate United States district court to enjoin such person from violating such provision, plan, or order. The provisions of subsections (c) and (d) of section 219 shall apply to any violation of any order or plan promulgated

by the Secretary under authority of subsections (a) and (b) of this section.]

* * * * *

TABLE OF CONTENTS

* * * * *

[TITLE VII—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

[PART 1—GENERAL PROVISIONS

[Sec. 710. Definitions.

[Sec. 711. Coverage.

[Sec. 712. Rules of Secretary for submission and approval of plans.

[PART 2—ENERGY CONSERVATION PLANS

[Sec. 721. Procedures for submission and approval of State energy conservation plans for commercial buildings and multifamily dwellings.

[Sec. 722. Requirements for State plans for regulated utilities.

[Sec. 723. Plan requirements for nonregulated utilities and building heating suppliers.

[PART 3—UTILITY PROGRAMS

[Sec. 731. Utility programs.

[Sec. 732. Building heating supplier program.

[PART 4—FEDERAL IMPLEMENTATION

[Sec. 741. Federal standby authority.]

* * * * *

